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**CIVIL LITIGATION REPORT  
LANCASTER BATTERY SITE  
LANCASTER, LANCASTER COUNTY, PENNSYLVANIA**

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**REGION III  
EASTERN DISTRICT OF PENNSYLVANIA**

**REGIONAL CONTACTS:**

**LYDIA ISALES (3RC21) FTS 597-9951  
OFFICE OF REGIONAL COUNSEL  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION III  
841 CHESTNUT BLDG.  
PHILADELPHIA, PA. 19107**

**SARAH CASPAR (3HW12) FTS 597-7982  
COST RECOVERY SECTION  
HAZARDOUS WASTE MANAGEMENT DIVISION  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION III  
841 CHESTNUT BLDG.  
PHILADELPHIA, PA. 19107**

**RECOMMENDED DEFENDANTS: SEE PAGE i**

**DATE OF REFERRAL: JUN 29 1990**

## Recommended Defendants

### I. Owners or Operators

- a. Edward Manix
- b. Stuart Manix
- c. Charles Myers Jr. and Genevieve Myers
- d. Lancaster Battery Company, Inc.
- e. Normal Realty, Inc.

### II. Generators

- a. Allegheny County Port Authority
- b. Binkley & Ober, Inc.
- c. Cleveland Transit Authority (Regional Transit Authority)
- d. D.B. Diefenderfer & Bro., Inc.
- e. Hamilton Equipment, Inc.
- f. Herbert W. Heffner, Inc.
- g. Hershey Foods Corp.
- h. Ford New Holland, Inc.
- i. Maryland Mass Transit Authority
- j. Mobile Dredging & Pumping Co.
- k. New Jersey Transit Authority
- l. Southeastern Pennsylvania Transportation Authority
- m. Sweigart's Bus Service

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## **I. CASE SYNOPSIS**

This is a Litigation Report for recoupment of approximately \$508,000 spent on an emergency removal action taken by EPA at the Lancaster Battery Site in Lancaster, Manheim Township, Lancaster County, Pennsylvania (Lancaster Battery Site or Site) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607. EPA additionally seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. Section 2201 for liability for further costs to be incurred at the Lancaster Battery Site.

The Lancaster Battery Site is a one-acre facility. The Lancaster Battery Co., Inc. (now and since 1975 known as Lancaster Battery Company Inc.) began a battery recycling process at the Site in 1955. Used battery cases were cracked on a concrete/asphalt pad on the property, with the battery cases burned in a cupola furnace. The process remained essentially the same until the company ceased operations in early 1986. The property is now owned by another company.

The Site had been a concern of the Commonwealth of Pennsylvania Department of Environmental Resources (PADER) since at least 1971. A lagoon containing acid wastewater was closed and a treatment facility for the wastewater was built in 1972 under PADER's direction. An air permit for the filter bags from the cupola furnace was obtained in 1970 and reviewed yearly

through 1986. The Lancaster Battery Company, Inc. was cited for an air permit violation and payed a \$250 fine in 1982. Vacuum air samples taken in 1984 at the adjacent Parkside Motel showed 24% lead content. In May 1986, PADER informed EPA of the potential threat posed by the Site and requested assistance.

In December 1986, EPA performed a preliminary removal site assessment of the Site. Fifteen random soil surface samples were taken. The results showed lead levels above 5,000 ppm in thirteen out of fifteen soil samples; one sample contained 509,000 ppm. On March 9, 1987, the EPA Regional Administrator approved the On-Scene Coordinator's Action Memorandum and obligated federal monies for the cleanup. The removal action, consisting of soil excavation and disposal of 1405 tons of contaminated soil, placement of 1-2 feet of soil as a cover following excavation, followed by seeding and mulching, was performed from March through August 1987. As stated above, approximately \$508,000 was spent by EPA in the emergency removal action which, by means of this lawsuit, EPA seeks to recover.

The proposed defendants in this CERCLA Section 107 action are set forth on page i.

## **II. STATUTORY BASES OF REFERRAL**

### **A. Applicable Statutes**

#### **1. Recovery Costs/Establishment of Liability**

(a) Section 107 of CERCLA, 42 U.S.C. § 9607;

#### **2. Declaratory Judgment for Future Liability**

(a) Section 113 (g) (2) of CERCLA, 42 U.S.C.

§ 9613(g) (2); and

(b) Declaratory Judgment Act, 28 U.S.C. § 2201.

### **B. Jurisdiction and Venue**

With certain exceptions not relevant here, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), provides that United States District Courts shall have exclusive original jurisdiction over all controversies arising under CERCLA, without regard to citizenship of the parties or the amount in controversy.

Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), provides that venue shall be in any district in which the release or damage occurred, or in which the defendant resides, may be found, or has a principal office. The release and damages with regard to the Lancaster Battery Site occurred within the geographical limits of the Eastern District of Pennsylvania. Venue thus properly lies in that district.

## **III. SIGNIFICANCE OF REFERRAL**

Section 113 (g) (2) (A) of CERCLA, 42 U.S.C. § 9613(g) (2) (A) provides that an initial action for cost recovery must be filed

within three years after completion of the removal action. The removal action described in Section V of this Litigation Report was completed on August 10, 1987 (Attachment 1). EPA Region III thus requests that this action be filed on or before August 10, 1990.

#### IV. SITE DESCRIPTION

##### A. Site Location and History

The Lancaster Battery Site is an approximately one acre site located on Harrisburg Pike in Manheim Township, Lancaster County, Pennsylvania. The address is No. 1330 Harrisburg Avenue. The Site is in a predominantly commercial area with a large, frequently used college athletic field (Franklin & Marshall College) located 40 feet to the south, a motel (Parkside Motel) directly to the east, and a fresh and frozen foods distributor (Banner Foods) abutting the Site to the north. Drainage from the Site enters a tributary that eventually drains into the Susquehanna River. The City of Lancaster, located less than two miles away, is served by surface water from the river (Attachment 1).

On January 15, 1963, Charles and Helen Myers (husband and wife) sold the property comprising the Site to Charles Myers, Jr. (son of Charles Myers) and his wife, Genevieve Myers (Attachment 2). On May 1, 1986, Charles Myers Jr. and Genevieve Myers sold the property to Normal Realty, Inc. (Attachment 3). Ain Plastics of Pennsylvania, Inc. leases the land and building from Normal Realty, Inc. (Attachment 25). EPA has not obtained a copy of



the lease but the earliest Ain Plastics could have begun leasing the property and buildings is May 1986 when Normal Realty Ltd. acquired the land.

The Lancaster Battery Site is at the location of the formerly operating Lancaster Battery Company, Inc. The Lancaster Battery Company, Inc. is a Pennsylvania corporation formed in 1954. According to the Articles of Incorporation, its purpose is "to manufacture, buy and sell, and generally deal in, at wholesale or retail wet storage batteries and allied products and to have all powers necessary thereto". The incorporators were Charles Myers, Charles Myers, Jr. and Genevieve Myers. The location of its registered office is given as No. 1330 Harriburg Avenue, Lancaster (Attachment 5).

On April 16, 1975, Stuart Manix formed Manix Associates, Inc. in Lancaster (Attachment 5). On May 5, 1975, Lancaster Battery Co., Inc and Manix Associates, Inc. merged, adopting the name of Lancaster Battery Company Inc. (Attachment 6).

The Site had been a concern of the Commonwealth of Pennsylvania Department of Environmental Resource (PADER) since the early 1970's (Attachments 7 and 8). The greatest concern was that of the off-site migration of lead dust. The facility had been cited previously by PADER for an air quality violation. On May 28, 1986, EPA was notified by PADER of the threat posed by high lead contamination and off-site migration of lead dust (Appendix D of Attachment 1).

## **B. Facility Processes**

According to Alfred Daiger, one of the past Lancaster Battery Company, Inc. employees interviewed by EPA (Attachment 9), there were two processes that occurred at the company. New batteries were manufactured and dead batteries were recycled. Mr. Daiger stated that the processes did not change much from when Charles Myers, Jr. ran the operation (1955-1975) to when Stuart Manix was in charge (1975-1986).

According to Mr. Daiger, purchased lead was mixed with reclaimed lead in the manufacturing process. A lead oxide paste was applied to a grid and the grid was cased and then "cured". Cells and plates were inserted into the grid case and sulfuric acid was added.

The recycling process began with the cracking of dead batteries from cars, buses and trucks. Batteries were cracked outdoors on a broken concrete or asphalt pad. The core of the battery was emptied into drums which were then poured into a holding tank. The battery casings were then allowed to cure on the pad and the grid was then melted in a cupola furnace to recover lead. The recovered lead was used in the manufacturing process described above. The cracking of batteries outdoors and the use of a holding tank are confirmed by a June 1980 Disposal Site Report prepared by FADER (Attachment 7). Initially, the acid was stored in an unlined lagoon. In 1972, a treatment facility was built and after treatment, the waste water was allowed to drain into the sewer (Attachments 7 and 9).

One change in the recycling process according to Mr. Stuart Manix as reported to PADER in 1976 (Attachment 7), was in how the battery plates were handled before being burned in the cupola furnace. Mr. Manix stated that when Mr. Charles Myers, Jr. ran the operation (1955-1975), the battery plates used to sit outside 1-2 months before being burned in the cupola. This practice was done to clean the lead off the plates. According to Mr. Manix, he did not allow the plates to sit but instead dipped the plates in a caustic soda solution prior to burning in the cupola furnace. No reference in any reports has been found on how this caustic soda solution was disposed.

#### C. National Priorities List Status

The EPA Fund Authorization Report (Appendix B of Attachment 1) reflects that EPA was considering proposing placement of the Site on the National Priorities List in 1987. No further action has been taken to date but EPA is considering whether to rank the site.

A Preliminary Assessment was performed by PADER in March 1986 (Attachment 7). EPA prepared the Site Investigation report dated December 1987. However, it was based on a site visit and sampling performed in March 1987, prior to initiation of the removal action. Thus, the conclusion reached in the report is that the site poses a health threat but it assumes that the emergency removal action addressed the threat. The report also states that the sampling performed by the OSC to determine what lead levels remained in the soil after soil excavation were

not available at the time of writing of the Site Investigation report (Attachment 8).

**D. General Description of Problems Presented at the Site**

The recycling and disposal operation described in Section IV.B. above created the conditions at the Site encountered by EPA in 1986-87.

PADER started inspecting the site in the 1970's and observed these practices (Attachment 7). It is possible the practices commenced even earlier.

The removal preliminary assessment conducted by EPA on December 11, 1986 revealed evident on-site soil contamination, distressed vegetation and areas unable to support any plant growth. Initial sampling revealed extremely high (13 out of 15 soil samples showed lead levels above 5,000 ppm) levels of lead in the surface soil (Attachment 1).

**V. STATUS OF CLEANUP PROCESS**

**A. State Response**

The PADER first issued the Lancaster Battery Company, Inc., an Air Permit (No. 36-319-025) for its cupola furnace dust emissions in 1970, and the permit was reissued every year until 1986 when the company ceased operations (Attachments 7 and 8). In 1982, however, PADER cited Lancaster Battery Company Inc. for an air emission violation arising from the fabric filter collector used to control emissions from the cupola furnace. Lancaster Battery Company Inc. paid a \$250.00 fine (Attachment 7).

In December 1971, PADER informed Charles Myers, Jr. (as President of Lancaster Battery Co. Inc.) that battery waste water discharges into an impoundment constituted a violation of Environmental Quality Board regulations and the Clean Streams Law. Mr. Myers was informed that if he continued operating the impoundment (or lagoon) he needed to obtain a permit. Lancaster Battery Co., Inc. obtained the necessary permit after constructing a treatment facility to neutralize the waste water. The waste water was then to be pumped into the sanitary sewer system of the City of Lancaster via the existing service connection for the company. The lagoon was to be removed when the treatment facility was constructed (Attachment 7). EPA could not locate the lagoon at the time of the removal action - it appears that a building was constructed where the lagoon used to be located (Attachment 1). According to the Site Investigation Report (Attachment 8), sampling performed by PADER of the lagoon in October 1971 revealed elevated levels of lead, zinc, cadmium, copper, tin and arsenic. Therefore, the possible existence of the lagoon will need to be investigated during any remedial investigation of the site or in any subsequent removal evaluation.

In January 1984, Mr. Manix was informed by PADER that a bulk dust sample collected at the walkway in the adjacent motel in October 1983 contained 24.4% lead. PADER recommended a more effective pollution control device for the assembly burning exhausts which it believed to be the source of contamination.

PADER also informed the adjacent Parkside Motel owners that the 24% lead levels were found and that Mr. Manix had been asked to address the situation (Attachment 7).

The PADER Preliminary Assessment (Attachment 7) notes that it was reported that a tank of waste sulfuric acid was buried beneath the loading dock at the Site. Additionally, an underground cement holding tank was found during the removal action in a storage building on site. The tank was found to contain 6-8 inches of neutral pH sludge in the bottom. Two pits were also found in the storage building with a neutral pH. (EPA addressed the gross contamination in the building by sweeping the walls and the floor (Attachment 1)).

As stated earlier, PADER prepared the Preliminary Assessment (Remedial) for the Site in March 1986 (Attachment 7). On May 28, 1986, PADER notified EPA of the potential threat posed by the site (Appendix D of Attachment 1).

The Commonwealth of Pennsylvania has instituted and completed both civil and criminal actions against Mr. Stuart Manix. A summary of those actions prepared by a state attorney is expected shortly. The criminal action was based on releases of lead-contaminated waste and resulted in Mr. Manix being sentenced to 2 1/2-5 years imprisonment and fines totaling \$250,000.

**B. EPA Removal Response**

On December 11, 1986, EPA's On-Scene Coordinator (OSC) and the Roy F. Weston Technical Assistance Team (TAT) conducted a preliminary removal site assessment. At that time, sample results were taken which confirmed the presence of high levels of lead and other heavy metals at the Site (Attachment 10).

Preliminary site assessment analytical data indicated on-site lead levels to be as high as 509,000 ppm in surface soils. Thirteen of fifteen random surface soil samples were found to contain lead levels greater than 5,000 ppm. Levels of arsenic, cadmium and chromium, above EP toxicity levels were also found in the surface soil (Attachments 1 and 10).

On March 9, 1987, the Regional Administrator of EPA Region III approved the OSC's Action Memorandum and obligated federal monies for the cleanup (Appendix B of Attachment 1). EPA's onsite removal action was conducted from March 23, 1987 to August 10, 1987 and consisted of the following activities:

- (1) Excavation, staging and ultimate disposal in an approved RCRA facility of 1405 tons of lead and other heavy metal contaminated soil;
- (2) An additional 6-12 inches of soil beneath the staged soil pile was also excavated and disposed;
- (3) Placement of one foot to two feet of clean soil over residual lead contaminated soil;
- (4) Compaction, seeding and mulching of entire area; and

- (5) Air monitoring was performed before, during and after the activities described in (1)-(4) above, to delineate off-site migration. This data helped in determining threat and dust control measures.

EPA is compiling an administrative record supporting the 1987 removal decision.

**C. Participation of other Federal and State Agencies in EPA Removal Response**

By memorandum dated January 16, 1987, the Agency for Toxic Substances and Disease Registry (ATSDR) evaluated site analytical data and certified the Site as a public health threat. The OSC relied on the memorandum in recommending to the Regional Administrator, EPA Region III that he sign the Action Memorandum (see Appendix B of Attachment 1).

During the performance of the removal action by EPA, the National Institute for Occupational Safety and Health (NIOSH) performed an evaluation on the motel employees, Air Plastics of Pennsylvania Inc. employees and groundskeepers from the nearby college. Blood lead levels were found to be within the normal range (Attachment 11).

The OSC contacted the Pennsylvania Department of Health (PADOH) in February 1987. PADOH assisted throughout the removal action by providing advice on the health effects posed by the Site to the surrounding businesses and users of the college athletic field (Attachment 1).

The PADER Bureau of Air Quality Control and Air Toxic Monitoring Unit assisted with the air monitoring program conducted at the Site, by providing three high volume air



samplers, installing the air samplers and reviewing the air monitoring program developed by EPA (Attachment 1).

#### **VI. PRIMA FACIE CASE**

Successful prosecution of a cost recovery action under Section 107 of CERCLA requires proof of the following elements:

- a release or threat of release of hazardous substances into the environment . . .
- from a facility . . .
- which causes the United States to incur response costs . . .
- for which the United States seeks recovery from a party falling into a liability category described in Section 107 of CERCLA.

This portion of the Litigation Report provides information useful in establishing each of the above elements:

#### **A. Release/Threatened Release of Hazardous Substances Into the Environment**

The term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22), in pertinent part as follows:

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other enclosed receptacles containing any hazardous substance or pollutant or contaminant).

The term "hazardous substance" is broadly defined in the statute at Section 101(14), 42 U.S.C. Section 9601(14), in pertinent part as follows:

The term "hazardous substance" means

- (A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act,

- (B) any element, compound, mixture, solution or substance designated pursuant to Section 102 of CERCLA;
- (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress),
- (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act,
- (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act, and
- (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act.

Pursuant to Section 102(a) of CERCLA, 42. U.S.C. Section 9602(a), EPA has published a list of designated hazardous substances. The list is found in EPA's implementing regulations codified at 40 C.F.R. Part 302.

The term "environment" is defined in Section 101(8) of CERCLA, 42 U.S.C. Section 9601(8), in pertinent part as follows:

The term "environment" means . . . (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

The following is a description of the onsite and offsite sampling results which demonstrate that there was an actual release at the Lancaster Battery Site.

The PADER performed a Preliminary Assessment of the Site in March 1986 which showed off-site migration of lead dust with soil lead concentration as high as 50%. On May 28, 1986, EPA was

notified of the PADER findings along with an official request for the EPA to address the situation.

On December 11, 1986, the Roy F. Weston TAT team performed a removal preliminary assessment for EPA. On-site lead levels were found to be as high as 509,000 ppm in surface soils. Thirteen out of fifteen random surface soil samples contained lead levels above 5,000 ppm. Arsenic was found in elevated levels in the surface soil (levels ranging from 36-75ppm), as was cadmium (levels ranging from 3.3 to 64 ppm) and chromium (ranging from 4-57 ppm). (Sample results do not reveal whether this was trivalent or hexavalent chromium). Lead, arsenic, cadmium and chromium are listed as hazardous substances at 40 C.F.R. § 302.4. The presence of these materials in the surface soil demonstrates that a release of hazardous substances has occurred.

**B. From a Facility**

"Facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), in pertinent part as follows:

The term 'facility' means...(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

The Lancaster Battery Site falls within this definition as a site or area where hazardous substances have been deposited, stored, disposed of, and placed "or otherwise come to be located." (see Section V of this Litigation Report).

**C. Which Causes the United States to Incur Response Costs**

CERCLA permits the United States to respond to releases of hazardous substances, pollutants, and contaminants into the environment and to sue to recover costs appropriately incurred in the course of such responses.

Section 104 of CERCLA, 42 U.S.C. § 9604, establishes the legal basis upon which response actions may be conducted. That section states in pertinent part:

Whenever

(A) any hazardous substances is released or there is a substantial threat of such a release into the environment, or

(B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, ... or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

In response to the release and threatened release of hazardous substances into the environment from the Lancaster Battery Site, EPA has to date incurred response costs in an amount exceeding \$508,890.40 (Attachment 12) for a removal response action.

**(D) For Which the United States Seeks Recovery From a Party Falling into a Liability Category Described in Section 107 of CERCLA**

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), sets forth several categories of persons against whom the United States may recover response costs. That section provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a .....facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility.....owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities...or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance,

shall be liable for --

- (A) all costs of removal or remedial action incurred by the United States Government... not inconsistent with the National Contingency Plan.

EPA recommends that this action be filed against the proposed defendants identified in the following subsections. The following subsections also provide information which may be used as a basis for recovery against these parties. Information relating to contacts between EPA and each party discussed herein may be found in Section IX.B. of this Litigation Report.

CERCLA activities may be either "removal" or "remedial" actions. Activities included under the Government's "removal" authority are set forth at Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), as follows:

The terms "remove" or "removal" means [sic] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken [sic] in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms include, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under Section 104(b) of this Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1947.

Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), provides in pertinent part that:

Whenever the President is authorized to act pursuant to subsection (a) of this section or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

1. OWNER/OPERATOR DEFENDANTS

Recommended Defendant:

- a. Lancaster Battery Company, Inc.  
1330 Harrisburg Ave.  
Lancaster, PA

The company has not filed dissolution papers with the Pennsylvania Corporation Bureau although it appears that it ceased operations at the site (its only facility) in 1986.

Agent for Service:

Same address as above

Financial Viability

Unknown, but the company ceased operations in 1986.

Legal Counsel:

unknown

Theory of Liability

The Lancaster Battery Co. Inc. operated the lead recycling operation at the Site from 1955-1975 and the Lancaster Battery Company Inc. operated it from 1975-1986 which caused the release of hazardous substances. Although Lancaster Battery Company Inc. ceased operations in 1986, it has not filed dissolution papers. Lancaster Battery Company Inc. is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

Summary of Liability

The Lancaster Battery Company Inc. began operations in 1955 which continued through 1986. Its method of operations was monitored by PADER beginning in the 1970's. Its facility processes included disposal of hazardous substances on the soil. (See Section IV.B. of this Litigation Report).

DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION

Attachment 7

Preliminary Assessment:  
The report includes information on PADER's knowledge of the company and its operations from 1971-86.

**Attachment 8**

**Site Investigation:**

The report includes information on PADER's knowledge of the company and its operations from 1971-86, in addition to the information described in Attachment 7.

**Attachment 4**

**Articles of Incorporation:** The Articles state that the purpose of the corporation is "to manufacture, buy and sell, and generally deal in, at wholesale or retail, wet storage batteries and allied products..." (December 27, 1954). Charles Myers Jr. and Genevieve Myers are listed as the incorporators and officers.

**Attachments 13,14,9**

**EPA Interviews with Jack Reeves, James Kautz and Alfred Daiger:** These witnesses describe the battery breaking process and the disposal of lead that occurred at the Site.

**Recommended Defendant:**

b. Edward Manix  
38 Deer Ford Road  
Lancaster, PA 17604

**Agent for Service:**

Unknown

**Legal Counsel:**

Unknown

**Financial Viability:**

Unknown

**Theory of Liability:**

Edward Manix operated the Lancaster Battery site at the time of disposal of hazardous substances. He is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).



**Summary of Liability:**

Edward Manix was also an operator of the facility from 1975 to early 1986. He provided direction during the years in question. He attended meetings regarding plant operation and in the absence of his son (Stuart) directed the meetings. His direction extended to the areas of disposal operations, plant maintenance and battery recovery.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION****Attachment 15**

**Interview with Denise Hill:**  
She states Edward Manix attended weekly meetings directed the meetings in the absence of his son Stuart and acted as the executive for the company. He provided direction - including disposal operations, plant maintenance and battery recovery.

**Attachment 9**

**Interview with Alfred Daiger:**  
He states Edward Manix (along with Stuart) did the purchasing and made the deals for the company.

Additionally, the 1st three attachments in Lancaster Battery Company Inc., Section 1.a. above, and the 1st two attachments in Stuart Manix section 1.b. below contain information relevant to the liability of Edward Manix.

**Recommended Defendant:**

c) Stuart Manix  
116 Wheatland Ave.  
Lancaster, PA 17604

**Agent for Service:**

Unknown

**Legal Counsel:**

Cheryl Sturm, Esq.  
1065 General Sullivan Drive  
West Chester, PA 19382

**Financial Viability:**

Unknown

**Theory of Liability:**

Stuart Manix operated the Lancaster Battery Site at the time of disposal of hazardous substances. Stuart Manix is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

**Summary of Liability:**

Stuart Manix was an operator of the facility from May 1975 to January 1986. He provided the majority of direction and control during the years in question. He attended and controlled all meetings regarding plant operation. His direction extended to the areas of disposal operations, plant maintenance and battery recovery.

CERCLA clearly allows individuals to be held liable for cleaning up hazardous wastes sites they were involved in creating. Section 107 of CERCLA explicitly permits imposition of strict liability on any person who at the time of disposal of any hazardous substance owned or operated any facility. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). CERCLA defines "persons" as, inter alia, "an individual." Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

Stuart Manix appears to have directed hazardous substance treatment and disposal operations at the Lancaster Battery Site from approximately 1975 to 1986. As a person in charge of the Lancaster Battery Co. day-to-day activities, he is liable as an "operator" within the meaning of CERCLA. See e.g., State of New York v. Shore Realty Corp., 759 F. 2d 1032 (2d Circuit 1985), Chemical Company, 810 F.2d 726 (8th Cir 1986).

In Shore Realty, the Court held a stockholder who helped manage his corporation liable as an "operator" under Section 107 of CERCLA. The Court found it unnecessary to pierce the corporate veil because the individual officer specifically directed, sanctioned, and actively participated in the corporation's maintenance of the CERCLA existence 759 F. 2d at 6052.

A similar argument for liability can be made against Stuart Manix based on witnesses statement (past employees of Lancaster Battery Company, Inc.)

In U.S. v. Northeastern Pharmaceutical & Chemical Co. ("NEPACCO"), the Court wrote:

As defined by statute, the term "person" includes both individuals and corporations and does not exclude corporate officers or employees.....[C]onstruction of CERCLA to impose liability upon only the corporation and not the individual; corporate officers and employees who are responsible for making corporate decisions about the handling and disposal of hazardous substances would open an enormous, and clearly unintended, loophole in the statutory scheme. 810 F.2d at 743.

In holding a plant supervisor individually liable under Section 107 of CERCLA, the NEPACCO Court focused on the critical fact that the employee had "authority to control the handling and disposal of hazardous substances." Id. The Court squarely rejected arguments that the plant supervisor was merely acting on behalf of the corporation and could not be held individually liable for the corporation's violations. The Court held that an individual can be held liable if he "personally participated in conduct that violated CERCLA." NEPACCO, 810 F. 2d at 744. This

"personal liability is distinct from the derivative liability that results from 'piercing the corporate veil'. "Id.

Mr. Manix appears to have been personally and most directly involved in Lancaster Battery Company, Inc.'s. battery recycling processes, based on his past employees' statements. However, these witnesses need to be reinterviewed by the litigation team and the Lancaster Battery Company, Inc. documents need to be located for additional evidence. In addition, the following additional employees need to be located and interviewed: Bill Axe, Art Boudier, Tony Caldwell, and Joe Martin. These employees are expected to at least confirm, and perhaps expand, upon Mr. Stuart Manix's running of the operation. In addition, it is hoped that they may be able to confirm or expand upon the list of Lancaster Battery Company Inc. clients (generators).

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION**

**Attachment 6**

**Articles of Merger: Manix Associates Inc. merged with Lancaster Battery Co. Inc. adopting the name of Lancaster Battery Company, Inc. The directors of Manix Associates Inc. (Stuart Manix, Edward Manix and M.B. Reedy) were named directors of the surviving corporation.**

**Attachment 6**

**Certificate of Merger: Commonwealth of Pennsylvania certificate approving the merger.**

**Attachment 15**

**Interview with Denise Hill: Stuart Manix attended and controlled weekly meetings. Provided majority of the direction - extended to areas of disposal operations, plant maintenance and battery recovery.**

- Attachment 13            Interview with Jack Reeves: Stuart Manix attended weekly meetings.
- Attachment 14            Interview with James Kautz: States Stuart Manix ran operation at night to avoid being seen and hid assets of the company.
- Attachment 9             Interview of Alfred Daiger: Stuart Manix arranged purchasing and deals for the company.

Stuart Manix was convicted on four counts under Title 18 U.S.C. § 1001 and started serving a 30 month sentence in January 1989. Two counts were for misrepresentations to OSHA and two for misrepresentations to DOD. The misrepresentations to OSHA consisted of falsifying blood lead levels in Mr. Joe Martin's (employee) blood analysis and in falsifying lead content in the company's air samples. Mr. Martin is in poor health, suffering from kidney damage caused by the lead exposure. The misrepresentations to DOD were for falsifying compliance with a contract. He is currently incarcerated at Allenwood Federal Correctional Facility at Allenwood, PA. The Assistant United States Attorney from the Eastern District of Pennsylvania who handled the case is Joan Markman at (FTS) 597-7983.

Recommended Defendant:

- (d) Charles W. Myers Jr. and Genevieve Myers  
1428 Center Road  
Lancaster, PA 17604

Agent for Service:

Unknown

**Legal Counsel:**

Unknown

**Financial Viability:**

Unknown

**Theory of Liability:**

Charles W. Myers Jr. and Genevieve Myers were the owners of the Site during the period of disposal up to May 1986. Further, Charles Myers Jr. was the operator of the site from 1955 to 1975. Charles W. Myers Jr. and Genevieve Myers are therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

**Summary of Liability:**

Charles Myers and Genevieve Myers owned the Site from 1963 through 1986, and Charles Myers Jr. ran the operation from 1955 through 1975. They formed the company (Lancaster Battery Co. Inc.) in 1954 and ran it until 1975.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:****Attachment 2**

Deed: Charles Myers Jr. and Genevieve Myers acquired the property from Charles Myers and Helen Myers on January 15, 1963.

**Attachment 9**

Interview with Alfred Daiger: The facility processes and practice were similar during the time it was operated by Charles Myers Jr. and Stuart Manix.

Additionally, the first three attachments in Lancaster Battery Company, Inc. 1.a. below and in the Stuart Manix Section b. above, contain information relevant to the liability of Charles Myers, Jr. and Genevieve Myers.

**Recommended Defendant:**

- e) Normal Realty Ltd.  
249 East Sandford Blvd.  
Mount Vernon, NY 10550

**State of Incorporation:**

Pennsylvania - 3/6/86

**Agent for Service:**

c/o Prentice Hall  
100 Pine Street  
Corporation System  
Harrisburg, PA 17108

**Legal Counsel:**

unknown

**Financial Viability:**

Unknown. However, Normal Realty Ltd. and Ain Plastics of Pennsylvania, Inc. (tenant) appear to be connected as evidenced by common officers and by the fact that in 1987, counsel for Ain Plastics responded by saying that neither Ain Plastics nor Normal Realty knew or had anything to do with the conditions at the Site. EPA is investigating the connection between the two.

**Theory of Liability:**

Normal Realty Ltd. is the current owner of the Site. Normal Realty Ltd. is therefore liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

**Summary of Liability:**

Normal Realty Ltd. is the current owner of the property and was the owner of the premises at the time of the removal action.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

Attachment 3

Deed: Normal Realty Inc.  
acquired the property on May  
1, 1986.

Normal Realty's possible assertion of a due care defense to liability is discussed fully in Section XI.A. below.

2. Generators

Recommended Defendant:

- a. Allegheny County Port Authority  
Executive Offices  
Beaver & Adams Aves.  
Pittsburgh, PA 15200

CREATION UNDER STATE LAW:

Depending on the population of Allegheny County, the County is either second class or third class: If second class: County Port Authority Act, PA. stat. Ann. Tit.55, Ch. 17 § 551. - 563.5. If third class: Pa. Stat Ann. Tit.55, Ch. 17a, § 571-586.

Agent for Service:

same address as above

Legal Counsel:

unknown

Financial Viability:

See Dun & Bradstreet report, Attachment 53

Theory of Liability:

Allegheny County Port Authority is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Allegheny County Port Authority is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Summary of Liability:

Allegheny County Port Authority contracted with Lancaster Battery Company, Inc. in 1981-82 for the treatment of and disposal of at least 1,320 used batteries which were transported to the Lancaster Battery Site.



**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

1.    **Attachment 16**                   Interview of William Shanfelder: (former employee), in which Mr. Shanfelder stated that Pittsburgh Transit or Port Authority of Allegheny County was a large bus battery account with approximately 100 batteries per month exchanged new for old. When Mr. Shanfelder is reinterviewed, he will have to be asked if he can remember the years Allegheny was a client.
  
2.    **Attachment 12**                   Interview of Denise Hill: in which Ms. Hill stated that Pittsburgh Transit Authority was a large quantity client.
  
3.    **Attachment 56**                   104(e) response: Allegheny contracted with Lancaster Battery Company, Inc. in 1981-82 for the purchase of 1,320 batteries, and this included having 1,320 dead batteries exchanged new for old.
  
4.    **Attachments 54 and 55**                   Encyclopedia reports on batteries: Types and amounts of metals found in batteries include the hazardous substances found at the Site. An expert witness will need to be retained to establish that batteries contain lead and other hazardous substances.
  
5.    With regard to "arrangement for disposal or treatment" (see potential defense set forth below in Section XI.A. below), in many, if not all cases, the recommended generator defendants arranged for dead batteries to be brought to the Lancaster Battery Site for credit. It is unclear whether they knew that the batteries were being broken but there is no credible argument that they thought something other than disposal or treatment of either the battery or the batteries constituents was to occur since the batteries were used or dead.

**Recommended Defendant:**

- b.    **Binkley & Ober, Inc.**  
       **P.O. Box 7**  
       **East Petersburg, PA 17520**

State of Incorporation:

Pennsylvania - 11/4/53

Chief Executive Officer, Donald Emich  
Sec/Treasurer, H. Lee Ober

Agent for Service:

same address as above

Legal Counsel:

unknown

Financial Viability:

unknown

Theory of Liability:

Binkley & Ober, Inc. is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person at the Site. Binkley & Ober, Inc. is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Summary of Liability:

Binkley & Ober, Inc. contracted with Lancaster Battery Company, Inc. between 1980-83 for the treatment and disposal of approximately 160 used batteries. Brinkley & Ober, Inc. was allowed a credit for dead batteries by Lancaster Battery Company Inc. on the purchase price of new batteries.

DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:

**Attachment 45:**

104(e) response:  
Approximately 40 dead batteries a year were picked up by Lancaster Battery Company Inc. employees between 1980-83 and Binkley & Ober, Inc. received a credit for them towards the purchase of new batteries.

As set forth under Allegheny County Port Authority(a, above), the existence of hazardous substances will be proven through reports and an expert witness. This approach will also be used for the following recommended generator defendants, (c) through (m), below.

Recommended Defendant:

- c. Cleveland Transit Authority (now called)  
Regional Transit Authority  
Administrative Offices  
615 Superior Ave, N.W.  
Cleveland, Ohio 44113-1877

CREATION UNDER STATE LAW:

Ohio Rev. Code Ann; Tit. 3, Ch. 306, §306.30-306.71

Agent for Service:

same address above

Legal Counsel:

unknown

Financial Viability:

unknown

Theory of Liability:

Cleveland Transit Authority (now known as Regional Transit Authority) is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Cleveland Transit Authority is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Summary of Liability:

Cleveland Transit Authority contracted with Lancaster Battery Company, Inc. for the treatment of and disposal of approximately 100 used batteries per month which were transported to the Lancaster Battery Site. At this time, we do not know how many months or years this arrangement existed.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

1. Attachment 16 Interview of William Shanfelder:  
Cleveland Transit was a large bus battery account with approximately 100 batteries per month exchanged new for old. Mr. Shanfelder will have to be reinterviewed and asked if he can remember the months or years Cleveland Transit was a client.
2. Attachment 15 Interview of Denise Hill:  
Cleveland Transit was a large quantity client.

**Recommended Defendant:**

- d. D.B. Diefenderfer & Bro., Inc.  
117 Prospect Street  
Reading, PA 19606

**State of Incorporation**

Pennsylvania - 3/23/70  
Chief Executive Officer,  
Robert E.D.B. Diefenderfer  
Secretary, Daniel E.D.B. Diefenderfer

**Agent for Service**

same address as above

**Legal Counsel:**

unknown

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

D.B. Diefenderfer & Bro., Inc. (an excavation contractor) is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person at the Site. The company is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Approximately 10-20 used batteries per year were picked up by Lancaster Battery Company Inc., from D.B. Diefenderfer & Bro., Inc. between 1979-1981 which were taken to the Site.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION****Attachment 17**

Response to 104(e) letter:  
Between 1979-81, new batteries were delivered to the company by Lancaster Battery Company Inc., and used batteries were picked up. Approximately 10-20 batteries were exchanged per year new for old.

**Recommended Defendant**

e. Hamilton Equipment, Inc.  
Box 478  
Ephrata, PA 17522

**State of Incorporation**

Pennsylvania - 8/23/46

**Agent for Service:**

same address as above

**Legal Counsel:**

unknown

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

Hamilton Equipment, Inc. (a wholesale paint, farm, lawn and garden equipment company) is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person at the Site. Hamilton Equipment, Inc. is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Summary of Liability:

Hamilton Equipment Inc. had used batteries picked up by Lancaster Battery Company, Inc. for a period of one year or less in the late 1970's or early 1980's. The volume of batteries is not known.

DOCUMENTATION RELEVANT TO LIABILITY DETERMINATIONAttachment 18

Response to 104(e) letter: Used batteries picked up by Lancaster Battery Company, Inc. for a period of one year or less in the late 1970's or early 1980's.

Recommended Defendant:

f. Herbert W. Heffner, Inc.  
Box 456-R.D. 2  
Reading, PA 19605

State of Incorporation:

Pennsylvania-1/2/70  
Herbert Heffner, Chief Executive Officer  
Secretary, Kathryn Heffner  
Treasurer, Herbert W.F. Heffner

Agent for Service:

same address as above

Legal Counsel:

unknown

Financial Viability:

See Dun & Bradstreet report, Attachment 53

Theory of Liability:

Herbert W. Heffner, Inc. (a local and long distance hauling and wholesale grain company) is a person who by contract, agreement or otherwise arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. The company is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

In 1980-81, the company named above had at least 33 "junk" batteries picked up by Lancaster Battery Company, Inc.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:****Attachment 19**

Response to 104(e) letter: In 1980-81 the company dealt with Lancaster Battery Company Inc. It purchased new batteries and had used ones picked up by Lancaster Battery Company, Inc. The documentation provided by Heffner reveals 33 "junk" batteries were returned to Lancaster Battery Company, Inc. from 10/25/80 to 08/01/81.

**Recommended Defendant:**

g. Hershey Foods Corp.  
100 Mansion Rd. East  
Hershey, PA 17033

**State of Incorporation:**

Delaware, authorized to do business in Pennsylvania 9/30/33

**Agent for Service:**

Hershey Foods Corp.  
100 Mansion Rd. East  
Hershey, PA 17033

**Legal Counsel:**

unknown

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

Hershey Foods Corp. (manufacturer of chocolate and candy bars, cocoa, etc.) is a person who by contract, agreement or otherwise arranged for disposal or treatment,

or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Hershey Foods Corp. is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Hershey Foods Corp. contracted with Lancaster Battery Company, Inc. for the treatment of and disposal of used batteries which were transported to the Lancaster Battery Site. At this time, we do not have an estimate on the amount of batteries picked up by Lancaster Battery Company, Inc. at Hershey Foods Corp.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

**1. Attachment 13**

Interview with Jack Reeves:  
Hershey Chocolate was a client; credit was given for old batteries (1978-82).

**Recommended Defendant:**

**h. Ford New Holland, Inc.  
500 Diller Avenue  
New Holland, PA 17004**

**State of Incorporation:**

**Delaware, authorized to do business in Pennsylvania 10/03/86**

**Agent for Service:**

**C.T. Corp System  
123 S. Broad Street  
Philadelphia, PA. 19103**

**Legal Counsel:**

**Dudley Feltham, Esq.  
Ford New Holland, Inc.  
500 Diller Avenue  
New Holland, PA 17004**

**Financial Viability:**

**See Dun & Bradstreet report, Attachment 53**



**Theory of Liability:**

Ford New Holland (subsidiary of Ford Motor Company, manufacturer of motor vehicles) is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Ford New Holland is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Ford New Holland contracted with Lancaster Battery Company, Inc. between 1980-86 for the treatment of and disposal of approximately 300-600 batteries which were transported to the Lancaster Battery Site.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:****1. Attachment 42**

104(e) response: Dead batteries were transported by Lancaster Battery Company, Inc. between 1980-86 with approximately 50-100 batteries transported every year. Sperry New Holland was formerly a division of Sperry Corporation. Sperry Corporation sold the assets of Sperry New Holland to Ford Motor Company in 1986. The former Sperry New Holland was incorporated by Ford as a wholly-owned subsidiary, named New Holland, Inc. In 1988, New Holland Inc. was dissolved and merged into Ford New Holland, Inc. According to Ford New Holland Inc., it is the successor in interest to Sperry New Holland.

**2. Attachment 13**

Interview with Jack Reeves: Sperry New Holland received credit for old batteries (1978-82). The discrepancy in the time periods will have to be investigated. It is possible that Reeves is correct and Sperry New Holland was a client 1978-79 but the

documents were destroyed at Sperry under standard document retention policies.

**Recommended Defendant:**

- i. Maryland Mass Transit Authority  
300 West Lexington  
Baltimore, Maryland 21201-3415

**Creation Under State Law:**

MD MASS Transit Administration, Ann. Code of Pub. General Laws of MD, tit. 7, subtit. 2 §§ 7-201-7-211.1.

**Agent for Service:**

Maryland Mass Transit Authority  
300 West Lexington  
Baltimore, Maryland 21201-3415

**Legal Counsel:**

Unknown

**Financial Viability:**

Unknown

**Theory of Liability:**

Maryland Mass Transit Authority is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Maryland Mass Transit Authority is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Maryland Mass Transit Authority contracted at least between 1983-84 with Lancaster Battery Company, Inc. for the treatment of and disposal of approximately 900-1000 used bus batteries per year which were transported to the Lancaster Battery Site.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

1. Attachment 20                      104(e) response: Used batteries were sent to Lancaster Battery Company, Inc. Estimate of 900-1000 used batteries a year from 1983-1984.
2. Attachment 14                      Interview with James Kautz: Mentions Baltimore Mass Transit.
3. Attachment 16                      Interview with William Shanfelder: Baltimore City Transit was a bus battery account with approximately 100 batteries/month exchanged new for old. Mr. Shanfelder will have to be reinterviewed and asked if he can remember what years Baltimore City Transit was a client.

**Recommended Defendant:**

- j. Mobile Dredging & Pumping Co.  
Route #1  
344 Pottstown Rd  
Exton, PA. 19341

**State of Incorporation:**

Pennsylvania - 09/24/64

**Agent for Service:**

same address as above

**Legal Counsel:**

Raymond Reott, Esq.  
Jenner & Block  
One IBM Plaza  
Chicago, IL. 60611

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

Mobile Dredging & Pumping Co. (sewer and water main cleaning service) is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person at the Site. The company is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Mobile Dredging had approximately 20-30 used batteries picked up a year by Lancaster Battery Company Inc. from 1981-85.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:****Attachment 21**

Response to 104(e) letter:

Mobile Dredging received credit for used batteries from Lancaster Battery Company, Inc. from 1981-85 and provides documentation. Approximately 20-30 batteries per year were returned.

**Recommended Defendant:**

k. New Jersey Transit Authority  
c/o Kenneth M. Worton  
Deputy Attorney General  
State of New Jersey  
Department of Laws and Public Safety  
McCarter Highway & Market Street  
P.O. Box 10009  
Newark, NJ 07101

**Creation under State Law:**

NJ Public Transportation Act of 1979, N.J. Stat. Ann., Tit. 27, subtit. 8, Ch. 25, §§ 27:25-1. - 27:25-34

**Agent for Service:**

same address as above

**Legal Counsel:**

See above

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

New Jersey Transit Authority is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Maryland Mass Transit Authority is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

New Jersey Transit Authority contracted with Lancaster Battery Company, Inc. for the treatment of and disposal of approximately 100 used batteries per month which were transported to the Lancaster Battery Site. At this time, we do not know how many months or years this arrangement existed.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

Attachment 13

Interview with Jack Reeves:  
Mentions N.J. Transit - credit given for old batteries.

Attachment 14

Interview with James Kautz:  
Mentions N.J. Transit.

Attachment 16

Interview with William Shanfelder: N.J. Transit was a large bus battery account with approximately 100 batteries per month exchanged new for old. Mr. Shanfelder will need to be reinterviewed and asked if he can remember what months or years these transactions occurred.

**Recommended Defendant:**

1. Southeastern Pennsylvania Transportation Authority  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

**Creation under State Law:**

Article III of the Pennsylvania Urban Mass Transportation Law, Pa. Stat. Ann tit. 55, §§ 600-301 - 600.343

**Agent for Service:**

Southeastern Pennsylvania Transportation Authority  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107  
Attn: Custodian of Records

**Legal Counsel:**

N. Cipriani, Esq.

**Financial Viability:**

See Dun & Bradstreet report, Attachment 53

**Theory of Liability:**

Southeastern Pennsylvania Transportation Authority is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by said person, at the Site. Southeastern Pennsylvania Transportation Authority is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Southeastern Pennsylvania Transportation Authority contracted with Lancaster Battery Company, Inc. for the treatment of and disposal of approximately one hundred used batteries per month which were transported to the Lancaster Battery Site. At this time, we do not know how many months or years this arrangement existed.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

**1. Attachment 16**

Interview of William Shanfelder: SEPTA a large battery account with approximately 100 batteries per month exchanged new for old. Mr. Shanfelder will need to be reinterviewed and asked if he can remember what months or years these transactions occurred.

**2. Attachment 15**

Interview of Denise Hill: SEPTA a large quantity client.

**Recommended Defendant**

**m. Sweigart's Bus Service  
5100 Deim Road  
New Holland, PA. 17557  
Telephone: (717) 354-8964**

**State of Incorporation:**

**No listing with either Delaware or Pennsylvania Corporation Bureaus.**

**Agent for Service:**

**unknown**

**Legal Counsel:**

**unknown**

**Financial Viability:**

**unknown**

**Theory of Liability:**

**Sweigart's Bus Service (runs fleet of buses) is a person who by contract, agreement or otherwise arranged for the disposal or treatment or arranged with a transporter for transport for disposal or treatment,**

of hazardous substances owned or possessed by said person, at the Site. The company is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

**Summary of Liability:**

Sweigart's Bus Service contracted with Lancaster Battery Company, Inc. for the pick-up of approximately 10-20 a year used batteries between 1979-1984.

**DOCUMENTATION RELEVANT TO LIABILITY DETERMINATION:**

**Attachment 22**

Response to 104(e) letter:  
From 1979-1985 the company has documentation of dealings with Lancaster Battery Company, Inc. Approximately 10-20 used batteries were picked up a year by Lancaster Battery Company, Inc. They dealt with it earlier but do not have documentation.

**VII. PARTIES ASSOCIATED WITH THIS SITE BUT NOT INCLUDED IN THIS ACTION**

**A. Parties with Respect to Which Additional Information is Needed**

1. Charles Myers  
1067 Lampeter Rd.  
Lancaster, Pennsylvania 17601

Helen M. Myers  
709 S. Queen Street  
Lancaster, Pennsylvania 17603

Charles Myers and his wife Helen, owned the property for a portion of the time Charles Myers Jr. operated the Lancaster Battery Co., Inc. (1955-1963). In 1963, Charles and Helen Myers transferred title to Charles Myers Jr. and Genevieve Myers (Attachment 2). Thus, Charles and Helen Myers may be responsible parties as owners at the time of disposal under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2). At present, EPA does not have any information on the company's processes and disposal practices before 1971. EPA is attempting to find out if PADER has any documents on the facility for the time period 1955-1963. If new information is discovered, EPA may wish to add Charles and Helen Myers to the list of recommended defendants.



2. **Royal Battery Company**  
1095 Saint George Avenue  
Colonia, N.J. 07067

Although Royal Battery Company was identified as a Lancaster Battery Company, Inc. distributor by Bill Shanfelder (Attachment 16), it has indicated in a telephone conversation it did not send used batteries to Lancaster Battery Company, Inc. A written response to the request for information letter is expected shortly (Attachment 22a).

3. **A&M Battery**  
414 Spring Street  
Elizabeth, N.J. 07201

A&M Battery was also identified as a Lancaster Battery Company, Inc. distributor by Bill Shanfelder (Attachment 16). EPA will consider its responsible party status after receipt of its response to the request for information letter (Attachment 22b).

4. **Allied Products and Services, Inc.**  
47 Fairview Road  
Post Office Box 450  
New Cumberland, PA. 17070

Allied's short response to EPA's request for information letter (Attachment 23) states it had no transactions with Lancaster Battery Company, Inc. between 1975-1986. A follow-up letter will be sent shortly to Allied asking Allied if it had any transactions with Lancaster Battery Company, Inc. between 1955-1975.

5. **D. Leroy Burkholder, Inc.**  
R.D. #1  
New Holland, PA 17557

EPA's request for information letter to the above-named company was returned for "insufficient address" and "addressee unknown". EPA will attempt to find a correct address to resend the letter (Attachment 23a).

6. **Chrome Alloy Leasing, Inc.**  
8154 Manchester Road  
St. Louis, Missouri 63144

The response to the request for information letter sent to this company was returned unclaimed. EPA will investigate the address and attempt to send the letter again (Attachment 23b).

7. Meadow Brook Travel Trailer Sales  
3269 Lincoln Highway East  
Route 30  
Paradise, Pennsylvania 17562

In the response to the request for information letter sent by Meadow Brook Travel Trailer Sales, the company states that a "couple of times" old batteries were returned to Lancaster Battery Co., Inc. but that the information does not show up on the invoices. A follow-up request will be sent to the company asking it to provide the basis for its belief that old batteries were returned a "couple of times" and asking it to provide the time period these transactions occurred.

10. Martin Machinery  
P.O. Box 35  
Martindale, PA. 17549

In the response to EPA's request for information letter, Martin Machinery states that it's a possibility that used batteries were picked up by Lancaster Battery Company, Inc. when they delivered new ones. A follow-up request will be sent to Martin Machinery asking it to expand upon its answer and to provide when it was a client of Lancaster Battery Company, Inc. with the amount of used batteries returned to Lancaster Battery Company, Inc. (Attachment 47).

11. Pottstown Trap-Rock Quarries, Inc.  
394 Savatoga Road  
Pottstown, PA. 19464

This company's response to EPA's request for information letter sets forth the company's position that it bought batteries from Lancaster Battery Company Inc. on three occasions and that used batteries may have been picked up but it is not reflected on the vouchers. A follow-up request letter will be sent to this company asking it for its basis in believing that used batteries may have been sent to Lancaster (Attachment 48). The company will be asked to provide the time period when it was a client of Lancaster Battery Company, Inc. with the amount of used batteries returned to Lancaster Battery Company, Inc.

The following companies have been named to EPA by Lancaster Battery Company, Inc. past employees as possible past clients and have been sent requests for information letters but responses have not yet been received. As responses are received, EPA will evaluate the company's responsible party status.

1. William Penn Equipment Corp.  
P.O. Box 175  
Stowe, PA. 19464

2. William Rollman Truck Rentals  
R.D. #1  
P.O. Box 213  
Lititz, PA. 17543
3. Sindall Truck Service, Inc.  
102 N. Custer Avenue  
New Holland, PA. 17557
4. Battery World  
Spring Street  
Reading, PA. 19603
5. Schaefferstown Equipment Company  
Schaefferstown, PA. 17088
6. Miller Trucking & Leasing  
R.D. #2, Box 353  
Honeybrook, PA. 19344
7. Delaware Container Company, Inc.  
W. 11th Ave. & Valley Road  
Coatesville, PA. 19320
8. Monroe Garman's Garage  
R.D. #2  
Lititz, PA. 17543
9. Lester R. Summers, Inc.  
Box 239, R.D. #1  
Ephrata, PA. 17522
10. International Mill Service  
Rt. 82  
P.O. Box 348  
Coatesville, PA. 19340
11. Victor F. Weaver, Inc.  
403 S. Custer Avenue  
P.O. Box 1156  
New Holland, PA. 17557
12. Truck Maintenance Company  
P.O. Box 592  
West Chester, PA. 19380

**B. Other Parties Not Recommended as Defendants**

1. **Ain Plastics of Pennsylvania, Inc.**  
1330 Harrisburg Ave.  
Lancaster, PA. 17603

Although Ain Plastics of Pennsylvania, Inc. (Ain Plastics) was identified as a potentially responsible party at the time of the removal action (Attachment 1), they do not appear to own the property. The last recorded deed transfers the property from Charles Myers Jr. and Genevieve Myers to Normal Realty, Inc. (Attachment 3). Ain Plastics leases the property from the current owner, Normal Realty, Inc. (Attachment 25). Ain Plastics, however, provides conflicting answers as to ownership in two separate letters. A clarification will be requested. We do not know when Ain Plastics began leasing the property and buildings.

2. **Shirks Chevrolet Company, Inc.**  
Paradise, PA. 17562

Shirks Chevrolet Company, Inc.'s response to EPA's request for information letter (Attachment 26) states that it never sent dead batteries to Lancaster Battery Company, Inc., and that Shirks only bought new batteries from Lancaster Battery Company, Inc.

3. **Morgan Corporation**  
One Morgan Way  
P.O. Box 588  
Morgantown, PA. 19543

Morgan Corporation's response to EPA's request for information letter (Attachment 27) states that it only has records from 1980-present and it has none showing that used batteries were returned to Lancaster Battery Company, Inc.

4. **McMinns Asphalt Co., Inc.**  
P.O. Box 4688  
Lancaster, PA 17604

McMinns Asphalt Co., Inc.'s response to EPA's request for information letter (Attachment 28) notes that it did not have used batteries picked up by Lancaster Company, Inc.

5. **Charles M. Shirk Trucking**  
Box 63  
Terre Hill, PA 17581

The company's response to EPA's request for information letter (Attachment 29) notes that Lancaster Battery Company, Inc. never received dead batteries from it.

6. East Penn Mfg. Co.  
Deka Road  
Lyon Station, PA 19536

The company's response to EPA's request for information letter (Attachment 30) notes that Lancaster Battery Company, Inc. was its client and that it never had used batteries picked up by Lancaster Battery Company, Inc.

7. Wenger's Farm Machinery Inc.  
251 South Race Street  
Myerstown, PA 17067-2394

The company's response to EPA's request for information letter (Attachment 31) notes that it sold Lancaster Battery Company, Inc. batteries at retail. The only batteries returned were new ones which were later returned for warranty (replacement or credit).

8. Trans-Materials Co.  
831 Lincoln Ave.  
West Chester, PA 19380

The company's response to EPA's request for information letter (Attachment 32) notes that no dead batteries were returned to Lancaster Battery Company, Inc.

9. Giorgi Mushroom Co.  
Box 96  
Temple, PA 19560

The company's response to EPA's request for information letter (Attachment 33) notes that it only has records from 1981 forward and finds nothing related to Lancaster Battery Company, Inc. No employees have any recollection of dealing with Lancaster Battery Company, Inc.

10. Pneumatic & Electric Equipment Company, Inc.  
501 Garfield Ave.  
West Chester, PA. 19380

The company response to EPA's request information letter (Attachment 34) notes that it only has records from 1984 forward and it has none dealing with Lancaster Battery Company, Inc. Employees have no recollection of dealing with Lancaster Battery Company, Inc.

11. **Texon USA**  
Turnpike Industrial Road  
Westfield, MA. 01085

Texon USA's response to EPA's request for information letter (Attachment 35) notes that Lancaster Battery Company Inc. was its client. Lancaster Battery Company, purchased a component (wood cellulose based separation) to be used in the manufacture of batteries from Texon USA.

12. **Transcon Express**  
28800 Appleton St.  
Camp Hill, PA. 17011

Transcon Express' response to EPA's request for information letter (Attachment 49) states that the company did buy new batteries from Lancaster Battery Company, Inc. and get credit for old batteries. However, EPA recommends that it not be named because the company claims that a Chapter 7 involuntary bankruptcy petition was filed against Transcon Express in the U.S. District Court for the Central District of California and that the petition was granted on May 2, 1990. A confirmation will be obtained by EPA as to the company's bankruptcy status. Because of the number of viable PRPs EPA already intends to pursue for the Lancaster Battery Site costs, we do not recommend that it would be an efficient use of our resources to pursue a separate action in bankruptcy against Transcon.

**C. Parties Contacted for Information (in addition to witnesses listed in Section XIII.B below)**

1. **Sally Manix**

EPA has been unable to obtain the Lancaster Battery company records, despite diligent attempts to do so. The U.S. Attorney's Office, Criminal Division (E.D. Pa.) had informed EPA that it had returned the records to the Manix household. In a telephone conversation, Mrs. Manix claimed she had not seen them. Mrs. Stuart (Sally) Manix has been sent a CERCLA request for information letter asking her to confirm in writing that she does not know the location of the Lancaster Battery Company, Inc. records which EPA has been unable to obtain (Attachment 50).

2. Marlin Reedy  
Pine Hill Services, Inc.

Mr. Reedy was identified by past Lancaster Battery Company, Inc. employees as a past business associate of Mr. Manix. Mr. Reedy states in his response that he was an independant accountant hired on a contractual basis by Lancaster Battery Company, Inc. He identifies Landis Battery as a wholly owned subsidiary of Lancaster Battery Company, Inc. Mr. Reedy has provided names of banks and accounting firms who did work for Lancaster Battery Company, Inc. to EPA. EPA will evaluate whether to send additional requests for information letters to the banks and accounting firms based on the information provided (Attachment 51). Further, we will follow-up and gather further information on Mr. Reedy's assertion that Landis Battery is a subsidiary of Lancaster Battery Company, Inc.

3. Ken Hanby

Mr. Hanby was identified by past Lancaster Battery Company, Inc. employees as a business associate of Mr. Manix and possibly a director of Lancaster Battery Company, Inc. A request for information letter has been sent to Mr. Hanby (Attachment 52).

VIII. DECLARATORY RELIEF

In addition to the costs specified in Section X of this Litigation Report, EPA seeks relief pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 for a declaratory judgment for further response costs to be incurred at the Lancaster Battery Site.

**IX. ENFORCEMENT HISTORY: CONTACTS WITH RECOMMEND DEFENDANTS****A. General Enforcement History**

The Lancaster Battery Site was referred to EPA for assessment by the Commonwealth of Pennsylvania in 1986 (Appendix D of Attachment 1). A Preliminary Assessment of the Site was conducted by EPA's OSC and the Roy F. Weston TAT. The OSC determined that the Site posed a risk to public health and the environment and prepared an Action Memorandum seeking approval for expenditure of federal monies based on the results of the preliminary assessment. That approval was given on March 9, 1987, by the Administrator of EPA Region III. On March 11, 1987, the OSC delivered notice to three parties (Ain Plastics, Charles Myers Jr. and Stuart Manix), giving them until March 17, 1987 to agree to take over cleanup actions (see Appendix H of Attachment 1). All declined or failed to respond to EPA's notice.

**B. Contacts with Recommended Defendants****1. Owners or Operators**

a. Edward Manix  
38 Deer Ford Road  
Lancaster, PA 17604

6-5-90 CERCLA 104(e) Letter sent to Edward Manix  
(Attachment 36).

b. Stuart Manix  
116 Wheatland Ave.  
Lancaster, PA 17604

1-30-87 CERCLA 104(e) request sent to Stuart Manix

3-3-87 response

3-10-87 Notice Letter sent to Stuart Manix (see  
Appendix H of Attachment 1).



3-27-87 letter from attorney for Mr. Manix

4-6-87 response from EPA

4-6-87 CERCLA 104(e) letter sent to Stuart Manix

5-5-87 response

5-87 EPA letter to attorney for Mr. Manix

2-10-88 letter to EPA from attorney for Mr. Manix

5-15-90 Stuart Manix is interviewed by Compliance Officer Sarah Caspar and Civil Investigator Leo Mullin.

6-11-90 Cheryl Sturm Esq. phone conversation with Leo Mullin

(Attachment 37)

- c. Charles W. Myers Jr. and Genevieve Myers  
1428 Center Road  
Lancaster, PA 17604

1-30-87 CERCLA 104(e) letter sent to Charles W. Myers Jr.

2-10-87 Response received

3-10-87 Notice letter sent to Mr. and Mrs. Charles Myers (see Appendix H of Attachment 1)

(Attachment 38)

- d. Lancaster Battery Company, Inc.  
No. 1330 Harrisburg Ave.  
Lancaster, PA

None (see discussion in section XI.A. below)

- e. Normal Realty Ltd.  
249 East Sandford Blvd.  
Mount Vernon, NY 10550

None

## 2. Generators

- a. Allegheny County Port Authority  
Beaver and Island Avenue  
Pittsburgh, Pennsylvania 15233

6-12-90 CERCLA 104(e) letter sent to Allegheny County Port Authority.

(Attachment 39)

b. Cleveland Transit Authority  
615 Superior N.W.  
Cleveland, Ohio 44113

6-12-90 CERCLA 104(e) letter sent to Cleveland Transit Authority.

6-8-90 phone conversation with Ed O'Pett, Esq. counsel.

(Attachment 40)

c. D.B. Diefenderfer & Bro., Inc.  
117 Prospect Street  
Reading, Pennsylvania 19606

5-23-90 CERCLA 104(e) letter sent to D.B. Diefenderfer & Bro., Inc.

5-31-90 Response received

(Attachment 17)

d. Hamilton Equipment Inc.  
Box 478  
Ephrata, Pennsylvania 17522

5-23-90 CERCLA 104(e) letter sent to Hamilton Equipment Inc.

6-4-90 Phone conversation with George Boyer, company representative

6-8-90 104(e) response received

(Attachment 18)

e. Herbert W. Heffner Inc.  
RD #2  
Reading, Pennsylvania 19605

5-23-90 CERCLA 104(e) letter sent to Herbert W. Heffner Inc.

6-8-90 104(e) response received

(Attachment 19)

f. Hershey Foods Corp.  
One Chocolate Ave.  
Hershey, PA 17033

5-21-90 CERCLA 104(e) letter sent to Hershey Foods

6-1-90 Phone conversation with Brian Simmons, company representative

(Attachment 41)

g. Ford New Holland, Inc.  
500 Diller Avenue  
New Holland, PA 17004

5-21-90 Two CERCLA 104(e) letter sent to Sperry New Holland.

6-4-90 Phone contact with Dudley Feltham Esq.

6-18-90 Response received

(Attachment 42)

h. Maryland Mass Transit Authority  
300 West Lexington  
Baltimore, Maryland 21201-3415  
Attn: William Coyle

5-23-90 CERCLA 104(e) letter sent to Maryland Mass Transit Authority.

undated - response

5-31-90 Phone conversation with Keith Beck, Maryland Mass Transit attorney

5-31-90 response received

6-11-90 Phone conversation with William Coyle, Manager Materials & Stones

6-13-90 Phone conversation with David Taylor, Purchasing Agent

(Attachment 20)

i. Mobile Dredging and Pumping  
Route 100  
Exton, Pennsylvania 19341

5-23-90 CERCLA 104(e) letter sent to Mobile Dredging and Pumping

6-8-90 104(e) response received

(Attachment 21)

j. New Jersey Transit Authority  
c/o Kenneth M. Worton  
Deputy Attorney General  
State of New Jersey  
Department of Laws and Public Safety  
McCarter Highway & Market Street  
P.O. Box 10009  
Newark, NJ 07101

5-23-90 CERCLA 104(e) letter sent to New Jersey Transit Authority.

6-6-90 Kenneth Worton New Jersey Deputy Attorney General contacted by phone.

(Attachment 43)

k. Southeastern Pennsylvania Transportation Authority  
(SEPTA)  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

6-12-90 CERCLA 104(e) letter sent to SEPTA.

(Attachment 44)

l. Sweigarts Bus Service  
RD #2 Deim Road  
New Holland, Pennsylvania 17557

5-23-90 CERCLA 104(e) letter sent to Sweigart's Bus Service

6-7-90 response received

(Attachment 22)

**X. COST RECOVERY**

The documentation of costs incurred with respect to the Site is attached hereto as Attachment 12. EPA's costs through April 1990 amount to \$508,890.40. The interest calculation will

be prepared by the Finance division in Region III once demand letters are issued.

**XI. OTHER LEGAL ISSUES**

**A. Potential Defensive Arguments**

Arguments which may be raised by one or more of the proposed defendants in the course of litigation are as follows:

1. Proposed defendants who were never given notice of the removal and an opportunity to participate in the removal action may argue that they cannot be held responsible for the costs of the removal.

As to most of the proposed defendants, EPA only came to possess information on which a liability case may be based after completion of the removal action. These entities have not to date received notices of potential liability and were not invited to participate in implementation of the removal action at the Site. These entities may argue that EPA cannot hold them responsible for the costs of removal because they were not given an opportunity to participate in the removal action.

First, EPA notes that a claim of non-participation in the removal action is not a statutorily recognized defense to liability. Liability under CERCLA is subject only to the defenses set forth in Section 107(b) of the statute (42 U.S.C. Section 9607(b)), and Section 107(b) does not include any such defense.

Second, the provisions in Sections 104 and 113 of CERCLA calling for participation provide that EPA is to make "reasonable efforts" to identify responsible parties and that

such parties are to be given notice considering the exigencies of the circumstances.

Section 300.415(a)(2) of the 1990 National Contingency Plan (NCP) states that "where responsible parties are known an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly". Section 300.65(a)(2) of the 1985 NCP (the NCP in effect at the time of the Lancaster removal) states that "where the responsible parties are known, an effort initially shall be made, to the extent practicable considering the exigencies of the circumstances, to have them perform the necessary removal actions. Where responsible parties are not known, an effort initially shall be made, to the extent practicable considering the exigencies of the circumstances, to locate them and have them perform the necessary removal action." Under either version of the NCP, it is clear that EPA needs to act in light of the emergency nature of the removal action needed and in effect, make a good faith effort in a limited time frame to identify responsible parties. EPA did that in this case by locating and notifying the property tenant, and past owner/operators.

In addition Section 113(k)(1) of CERCLA, 42 U.S.C. Section 9613(k)(1), requires EPA to establish an administrative record supporting the selection of response actions. Section 113(k)(2)(A) of CERCLA obliges EPA to establish procedures for appropriate participation of interested parties in the

development of the administrative record. Section 113(k)(2)(D) of CERCLA, however, tempers these requirements vis-a-vis responsible parties by acknowledging that all such parties may not be identified at the time the remedy is selected. That provision states:

[EPA] shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in the paragraph shall be construed as a defense to liability.

42 U.S.C. Section 9613(k)(2)(D) (emphasis added). By this provision Congress recognized that EPA cannot elicit the participation of responsible parties who have not been identified.

Finally, courts faced with participation issues have intimated that a cost recovery action provides an adequate opportunity for responsible parties to object to the cost and adequacy of response actions. In such cases, courts have remanded to EPA for proceedings designed to ensure participation rather than holding that participation deficiencies are determinative. See, e.g., Lone Pine Steering Committee v. EPA, 777 F. 2d 882, 887-88 (3d Cir. 1985), cert. denied, 476 U.S. 1115 (1986); United States v. Rohm and Haas Company, Inc., 669 F. Supp. 672, 679-84 (D.N.J. 1987). See also United States v. Mottolo, 695 F. Supp. 615, 628 (D.N.H. 1988) (Government has no affirmative duty to consult with private parties before undertaking response actions).

In summary, while the proposed defendants may argue that they should have an opportunity to comment on the response actions for which EPA seeks to recover, these defendants will not, by these arguments, achieve total insulation from liability in this case.

2. The recommended generator defendants will argue that EPA cannot obtain review of its actions on the administrative record because they did not receive notice and an opportunity to participate and/or comment.

In addition to the argument set forth in (1) above, the recommended generator defendants may argue that EPA failed to give them notice and opportunity to participate and/or comment in the removal action and thus, the United States cannot obtain review of its actions based on the administrative record (U.S. v. National Bank of the Commonwealth, et al., W.D.Pa, No. 89-2127, April 11, 1990). Section 113(k)(2)(D) of CERCLA, 42 U.S.C. § 9613(k)(2)(D), however, (as set forth in the first potential defense above), states that EPA's obligation is to make reasonable efforts to identify and notify PRP's as early as possible to participate in the development of the administrative record. It goes on to say that "nothing in this paragraph shall be construed as a defense to liability." Thus, the United States need only show what efforts were undertaken to identify and notify PRPs to show that the EPA met its statutory obligations.

Further, EPA has not yet completed preparation of an administrative record of documents forming the basis for the selection of the 1987 response action. Following compilation of this record, EPA can minimize defendant's possible arguments on



this point by giving the defendants the opportunity to comment on the record, and to submit documents into it. This action would distinguish Lancaster from the facts of National Bank. At least one court has recognized the acceptability of such an approach in maintaining record review. U.S. v. Charles George Trucking Co., Inc., D. Mass. No. 85-2463-WD, February 26, 1990.

In addition, even if the United States did not obtain review on the administrative record, it should still be entitled to the arbitrary and capricious standard of review under general principles of administrative law.

3. Lancaster Battery Company, Inc. may argue that it did not receive notice of the removal action in 1987 and that EPA knew it was the operator of the facility.

Lancaster Battery Company, Inc. may attempt to argue that EPA knew it was the operator of the facility and yet failed to give it notice, and thus it should not be held liable or EPA should not get a favorable standard of review (essentially the same arguments described in detail in section 1 and 2 above). The OSC Report (Attachment 1), the On-Scene Coordinator and the Removal Enforcement Officer at the time of the removal action can demonstrate that EPA contacted both prior incorporators/officers of the company - Charles Myers, Jr. and Stuart Manix. Mr. Stuart Manix, as President of the company was also aware of EPA's intent with respect to the Site because he had received notice as an individual. In addition, the company was no longer in operation at the time of the removal action; thus, EPA notified the tenant.

4. The proposed generator defendants will argue that obtaining a credit for batteries is not "arranging for disposal or treatment."

The generator defendants could argue that arranging to have used batteries picked up for credit is not arranging for treatment or disposal of a hazardous substance. They could argue that a used battery is not a hazardous substance for purposes of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Although lead, arsenic, cadmium, and chromium are listed at 40 C.F.R. § 302.4 pursuant to Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), the argument would be that they did not dispose of a 'waste' but of a battery. However, courts have held that a material need not be a waste in order to constitute a hazardous substance; Edward Hines Lumber Co. v. Vulcan Materials Co., 695 F. Supp. 651, 654 (N.D. Ill. 1988).

The next prong of the argument would be that even if a battery is deemed hazardous for CERCLA purposes, the sale of a valuable product cannot be termed "an arrangement for disposal or treatment." However, the case law indicates that the fact that even if a material may be valuable or is sold in a bona fide transaction, it does not relieve the seller from Section 107(a)(3) liability. See U.S. v. A.F. Materials Co., Inc., 582 F. Supp 842 (S.D.III. 1984); New York v. General Electric Company, 592 F.Supp. 291 N.D. N.Y. 1984); Jersey City Redevelopment Authority v. PPG Industries, Inc., 655 F.Supp. 1257 (D.N.J. 1987) and U.S. v. Conservation Chemical Co., 619 F. Supp. 162 (W.D.Mo. 1985). Receiving a credit for used batteries

towards the purchase of new batteries, could be termed a 'sale'. Such a sale is inherently an "arrangement for disposal or treatment" however, based on the following reasoning. The 'arrangement' to have dead or used batteries picked up by Lancaster Battery Company, Inc. for credit is an arrangement for disposal or treatment because it would be unreasonable for the generator defendants to assume that the dead or used batteries would remain in the stream of commerce.

Section 101(29) of CERCLA, 42 U.S.C. § 9601(29) defines 'disposal' and 'treatment' by reference to RCRA Section 1004. Disposal is then defined in Section 1004(3) of RCRA as "....discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste [or substance for CERCLA purposes] into or on any land or water, so that such ....waste....may enter the environment or be emitted into the air or discharged into any waters, including any groundwater." Arranging to have dead or used batteries removed constitutes an arrangement for deposit, dumping or placing of the batteries into land or water, 42 U.S.C. § 6903(3), and is therefore a disposal.

Treatment is defined in CERCLA by reference to the definition of that term found in Section 1004(34) of RCRA. RCRA in turn defines treatment to include "any method, technique, or process....designed to change the physical, chemical, or biological character or composition of a hazardous waste [or substance for CERCLA purposes] so as to.....render such waste....amenable for recovery." 42 U.S.C. 6903(34). The

melting and other processes used in battery recycling at the Site certainly change its physical (and in some cases chemical) character. If such processes also make the scrap amenable for recovery, treatment has occurred.

The term recovery is not defined under RCRA or CERCLA, nor is the legislative history of either statute helpful in determining its scope. The plain meaning of the term, as set forth in the American Heritage Dictionary of the English Language is "the obtaining of usable substances from unusable sources." The dead batteries were unusable to the generators and were a source of usable materials for Lancaster Battery Company, Inc. Lancaster Battery Company, Inc. processes therefore permitted recovery of the lead in the batteries, and constituted treatment for CERCLA purposes.

Thus, there is liability under CERCLA for these activities, because there was an arrangement for disposal or treatment.

5. EPA cannot proceed with the civil action because the evidence was obtained in violation of Federal Rules of Criminal Procedure, Rule 6(e)(2).

Rule 6(e)(2) of the Federal Rules of Criminal Procedure states:  
 General Rule of Secrecy: A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

The defendants might argue that EPA obtained its information from grand jury witnesses and thus the evidence is tainted. Two of the past Lancaster Battery Company, Inc. employees were witnesses in the criminal investigation. EPA, however, did not interview the witnesses representing that its investigation was part of the past grand jury investigation nor did it question the witnesses on what occurred before the grand jury. In addition, Rule 6(e)(2) does not apply to witnesses before the grand jury. In conversations with the U.S. Attorney's Office, Eastern District of Pennsylvania that office indicated that there is no Rule 6(e)(2) taint as long as EPA did not represent EPA was part of the past grand jury investigation.

6. Normal Realty Inc. will argue it is entitled to a defense under Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) states:

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substances and the damages resulting there from were caused solely by -

- (3) an act or omission of a third party (other than an employee, agent, or individual acting in connection with a contractual relationship with the defendant), if the defendant can show by a preponderance that he:
  - (i) exercised due care with respect to the hazardous substances concerned, taking into consideration the characteristics of such substances; and

- (ii) took precautions against foreseeable acts or omissions of third parties and the consequences that could foreseeably result from such acts or omissions.

Normal Realty might argue that it is entitled to a third party defense because the release occurred prior to their ownership of the property. Normal Realty, however, will be unable to show it that it meets the standards in Section 101(35) (A)(i) of CERCLA, 42 U.S.C. § 9601(35)(A)(1) because it cannot prove it undertook all appropriate inquiry into the previous ownership and uses of the property, as CERCLA requires a purchaser must do in order to escape liability. When they purchased the land in May 1986, before the removal action, the land and buildings were visibly contaminated (Attachments 7 and 8).

**7. The generator defendants will argue that EPA cannot establish that their batteries contained hazardous substances.**

An expert witness will need to be retained by the United States to establish that batteries contain lead and other hazardous substances, such as which were found and cleaned up at the Site. In addition, the Lancaster Battery Company past employees will need to be reinterviewed to obtain a description of the batteries they remember picking up for each client.

**B. Ad Damnum Issue: What Costs should be pleaded when the complaint is filed?**

The Summary of Expenditures referenced in Section X of this Litigation Report (Attachment 12) shows that as of April 1990, EPA has incurred costs amounting to over \$508,000.00 in

connection with response activities at the Lancaster Battery Site. At the time the Summary of Expenditures was compiled, EPA was incurring costs for additional enforcement activities (i.e., preparation of this Litigation Report and issuance of further information requests). As of this writing, EPA continues to incur costs for enforcement and may be incurring additional costs for pre-remedial, additional removal activities or remedial action. Region III recommends that the United States seek just the costs associated with the completed removal action, (as reflected in Attachment (12)), and the additional enforcement costs associated with the recovery of those removal costs.

## **XII LITIGATION STRATEGY**

### **A. Discovery**

In proceeding with the proposed litigation, extensive discovery will be necessary in order to supplement the prima facie case outlined against the recommended defendants. Most importantly, the past employees of Lancaster Battery Company, Inc. need to be reinterviewed to clarify that the past clients they identified did, in fact, return used batteries. Further, other past employees not yet contacted should be located. Additional investigation of parties whose response to EPA's request for information letter has not been received or is unclear needs to be evaluated for further action. In addition, the Lancaster Battery Company, Inc. records shall be located, if they still exist. EPA Region III is at present continuing its investigation in these areas.

**B. Summary Judgment**

At this point in time EPA Region III recommends filing a motion for summary judgment only against the recommended owner/operator defendants. With respect to the recommended generator defendants, summary judgment is not recommended. As set forth above, witnessess need to be reinterviewed and at present invoice documentation we have on some companies does not clearly reflect credits given for used batteries.

**XIII. WITNESSES/LITIGATION SUPPORT**

**A. Attached Evidentiary Documents**

**B. Potential Witnesses**

1. Jack Downie, On-Scene Coordinator (3HW32)  
Region III  
Emergency Response Section  
United States Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA. 19107  
Telephone: FTS (304)233-9831
2. Philip Younis, Junior On-Scene Coordinator  
TetraTech  
910 S. Chapel St.  
Newark, NJ 19713  
Telephone: (302) 738-7551

Messrs. Downie and Younis were the Federal OSCs responsible for the overall success of the project. Either one can certify that there was a release from this facility and that actions taken were consistent with the NCP. Their most current business addresses and telephone numbers are listed above.

3. Dr. Walter Lee (3HW31)  
United States Environmental Protection Agency  
Region III  
Emergency Response Section  
841 Chestnut Building  
Philadelphia, PA. 19107  
Telephone: (FTS) 597-2711



Dr. Lee was the EPA Enforcement Project Officer assigned to the Lancaster Battery Site at the time of the removal action. Dr. Lee can testify to EPA's efforts to identify potentially responsible parties PRPs at the Lancaster Battery Site to give them notice with respect to the removal action. His last current business address and telephone number are listed above.

4. Charles Walters (3HW02)  
CDC/ATSDR  
United States Environmental Protection Agency  
Region III  
841 Chestnut Building  
Philadelphia, PA 19107  
Telephone: FTS 597-7291

Mr. Walters certified the Site as a significant threat to public health by virtue of the high levels of lead detected onsite and can testify to same. Mr. Walter's correct business address and telephone number are listed above.

5. Kent Gray

Mr. Gray was with the Agency for Toxic Substances and Disease Registry (ATSDR) and assisted the OSC during the removal action by providing information regarding the health effects posed by the Site. Mr. Gray has left ATSDR and to date EPA has not been able to obtain a current address for him. EPA will continue to attempt to locate him.

6. Kern Anderson

7. Dr. Jay Bainbridge  
I.P.P.F.  
Regents College, Inner Circle  
Regents Park  
London, England  
NW1 HWS

Mr. Anderson and Dr. Bainbridge were with the National Institute for Occupational Safety and Health (NIOSH) and performed the blood study described in Section. EPA is attempting to find Mr. Anderson's current address. Dr. Bainbridge's current business address is listed above.

8. Gregory L. Harder  
Pennsylvania Department of Environmental  
Resources  
Bureau of Waste Management  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
(717) 787-7382

Mr. Harder contacted EPA in May 1986 requesting assistance. He provided assistance to the OSC during the removal action on the air monitoring performed at the Site. Mr. Harder's current business address and telephone number are listed above.

9. Dr. Sivarajah
10. Dr. James Fox
11. Dr. James Logue  
PA Department of Health  
Division of Environmental Health  
Room 1020  
Health and Welfare Building  
Harrisburg, PA. 17108  
Telephone: (717) 787-1708

The doctors listed above were consulted by the OSC during the removal action regarding the health effects posed by the Site to the surrounding businesses and those who used the recreational field. Their current business address and telephone number are listed above.

12. Jennifer Brown  
Roy F. Weston, Inc./SPER  
215 Union Boulevard  
Suite 600  
Lakewood, Colorado 80228  
Telephone: (303) 980-6800

Ms. Brown was one of the Technical Assistance Team (TAT) members who performed the removal preliminary assessment (Attachment 10). Ms. Brown prepared the trip report (Attachment 10). Ms. Brown provided technical assistance to the OSC throughout all phases of the removal action. Ms. Brown's current business address and telephone number are listed above.

13. Peter Harnett  
ICF Technology Inc.  
379 Thornall St.  
Metro Park III-5th St.  
Edison, NJ 08837  
201-906-2400  
Telephone: (201) 906-2400

Mr. Harnett was another of the TAT members who performed the removal preliminary assessment. Mr. Harnett also provided technical assistance to the OSC throughout all phases of the removal action. Mr. Harnett's current business address and telephone number are listed above.

14. John DiSciullo  
C.C. Johnson and Malhotra Inc.  
215 Union Boulevard  
Lakewood, Colorado 80228  
Telephone: (303) 987-2929

Mr. DiSciullo provided technical assistance to the OSC throughout all phases of the removal action. Mr. Di Sciullo's current business address and telephone number are listed above.

15. Shekhar Subramanian  
5599 San Felipe  
Suite 700  
Houston, Texas 77056  
Telephone: (713)-621-1620

Mr. Subramanian provided technical assistance to the OSC throughout all phases of the removal action. His current business address and telephone number are listed above.

16. Steve Rock  
Roy F. Weston, Inc.  
One Weston Way  
Westchester, PA. 19380  
Telephone: (215)-430-3022

Mr. Rock provided technical assistance throughout all phases of the removal action. His current business address and telephone number are listed above.

17. Barbara Weaver  
Lancaster Labs  
2424 New Holland Pike  
Lancaster, PA. 17601-5994  
Telephone: (717) 397-4701

Ms. Weaver was in charge of the soil and air sample analysis performed for EPA by Lancaster Labs. Her current business address and telephone number are listed above.

18. Tanya Thomas (3HW12)  
United States Environmental Protection Agency  
Region III  
841 Chestnut Bldg.  
Philadelphia, PA. 19107  
Telephone: FTS 597-6679

Ms. Thomas prepared the Summary of Expenditures (Attachment 12) and can testify regarding the costs incurred by EPA with respect to this Site. Her current address and telephone number are listed above.

19. Denise Hill  
Deadend Rd.  
Lititz, PA.  
Telephone: (717) 627-4048

Ms. Hill was a past employee of Lancaster Battery Company, Inc. See Attachment 15 for the interview summary memorandum. Her current home address and telephone number are listed above.

20. Jack Reeves  
36 E. 2nd Ave.  
Lititz, PA. 17543  
Telephone: (717) 626-0459

Mr. Reeves was a past employee of Lancaster Battery Company Inc. See Attachment 13 for the interview summary memorandum. His current home address and telephone number are listed above.

21. James Kantz  
309 Glenview Circle  
Lititz, PA. 17543  
Telephone: (717) 291-1840

Mr. Kantz was a past employee of Lancaster Battery Company Inc. See Attachment 14 for the interview summary memorandum. His current home address and telephone number are listed above.

22. William Shanfelder  
1025 Union House Rd.  
Lititz, PA 17543  
Telephone: (717) 626-7890

Mr. Shanfelder was a past employee of Lancaster Battery Company, Inc. See attachment 16 for the interview summary memorandum. His current home address and telephone number are listed above.

23. Alfred Daiger  
390 Grace Ridge Drive  
Lancaster, PA 17603  
Telephone: (717) 285-3675

Mr. Daiger was a past employee of Lancaster Battery Company Inc. See attachment 9 for the interview summary memorandum. His current home address and telephone number are listed above.

As set forth in Section VI.F.1.C, the following past employees of Lancaster Battery Company, Inc. should be located and interviewed: Bill Axe, Art Boudier, Tony Caldwell and Joe Martin.

### Attachments

1. On-Scene Coordinator's Report for Lancaster Battery Site prepared by Jack Downie, On-Scene Coordinator (OSC).
2. Deed for Lancaster Battery Site property from Charles and Helen Myers to Charles Myers Jr. and Genevieve Myers.
3. Deed for Lancaster Battery Site property from Charles Myers Jr. and Genevieve Myers to Normal Realty, Inc.
4. Articles of Incorporation - Lancaster Battery Co., Inc.
5. Articles of Incorporation - Manix Associates, Inc.
6. Merger documents - Lancaster Battery Co., Inc. and Manix Associates, Inc.
7. Preliminary Assessment, Lancaster Battery Site, PADER, March 1986.
8. Site Investigation, Lancaster Battery Site, EPA March 1987.
9. Request for Information letter to Alfred Daiger dated May 25, 1990 and interview summary dated May 31, 1990.
10. Lancaster Battery Trip Report, Jennifer Brown (TAT) to Mike Zickler (OSC), dated December 16, 1986.
11. Letter from Kevin Anderson (NIOSH) to Jack Downie (OSC) dated May 7, 1987 and form letter used to inform affected employees, May 6, 1987.
12. Summary of Expenditures for the Lancaster Battery Site, prepared by Tanya Thomas, dated May 14, 1990.
13. Telephone interview with Jack Reeves, dated April 17, 1990.
14. Telephone interview with James Kautz, dated April 10, 1990.
15. Telephone interview with Denise Hill, dated June 4, 1990.
16. Telephone interview with William Shanfelder, dated June 4, 1990 and request for information letter to William Shanfelder, dated May 25, 1990.
17. Request for information letter to D.B. Diefenderfer & Bro., Inc. dated May 23, 1990 and response dated May 31, 1990.
18. Request for information letter to Hamilton Equipment, Inc., dated May 23, 1990 and response dated June 8, 1990.

19. Request for Information letter to Herbert W. Heffner, Inc., dated May 23, 1990 and response dated June 8, 1990.
20. Request for Information letter to Baltimore Mass Transit Authority dated May 23, 1990, response from Maryland Mass Transit Authority undated, and second response from Maryland Mass Transit Authority dated June 13, 1990; records of phone conversations dated May 31, 1990, June 11, 1990 and June 13, 1990.
21. Request for Information letter to Mobile Dredging & Pumping Co. dated May 23, 1990 and response dated June 8, 1990.
22. Request for Information letter to Sweigert's Bus Service dated May 23, 1990 and response dated June 7, 1990.
- 22a. Request for Information letter to Royal Battery and telephone memorandum dated June 15, 1990.
- 22b. Request for Information letter to A&M Battery dated June 12, 1990.
23. Request for Information letter to Allied Electric Company dated May 25, 1990 and response from Allied Product and Services, Inc. dated June 1, 1990.
- 23a. Request for Information letter to D. Leroy Burkholder, Inc. dated May 23, 1990 and copy of envelope returned for "Addressee Unknown" and "Insufficient Address".
- 23b. Request for Information letter to Chrome Alloy Leasing Inc. dated May 3, 1990 and copy of envelope returned "unclaimed".
24. Request for Information letters to 14 companies and telephone conversation memoranda.
25. Request for Information letter dated January 30, 1987 and response dated February 13, 1987; Request for Information letter to Ain Plastics of Pennsylvania, Inc. dated May 1, 1987 and response dated March 23, 1987.
26. Request for Information letter to Shirks Chevrolet Company, Inc. dated May 23, 1990 and response, undated.
27. Request for Information letter to Morgan Trailer Mfg. Co. dated May 23, 1990 and response from Morgan Corporation dated June 11, 1990.
28. Request for Information letter to McMinn's Asphalt Co., Inc. dated May 23, 1990 and response dated June 5, 1990.

29. Request for Information letter to Charles M. Shirk Trucking dated May 25, 1990 and response dated June 7, 1990.
30. Request for Information letter to East Penn. Mfg. Co. dated May 21, 1990 and response dated May 31, 1990.
31. Request for Information letter to Wenger's Farm Machinery, Inc. dated May 23, 1990 and response dated May 30, 1990.
32. Request for Information letter to Trans-Material Co. dated May 23, 1990 and response dated June 4, 1990.
33. Request for Information letter to Giorgi Mushroom Co. dated May 23, 1990 and response dated June 1, 1990.
34. Request for Information letter to Peeco Corporation dated May 23, 1990 and response from Pneumatic & Electric Company, Inc. dated May 30, 1990.
35. Request for Information letter to Texon USA dated May 3, 1990 and response dated May 9, 1990.
36. Request for Information letter to Edward Manix dated June 5, 1990.
37. Request for Information letter to Stuart Manix dated January 30, 1987; response dated March 3, 1987; letter from Terry Bossert, Esq. to Jack Downie dated March 27, 1987; response letter from Lydia Isales, Esq. (EPA) to Terry Bossert, Esq., dated April 6, 1987; request for information letter to Stuart Manix dated April 6, 1987 and response dated May 5, 1987; letter dated May 1987 from Lydia Isales, Esq. to Terry Bossert, Esq; letter from Terry Bossert, Esq. to Joseph Donovan, Esq. (EPA) dated Feb. 10, 1988 and memo of contact by Leo Mullin dated June 11, 1990, summary of interview conducted of Stuart Manix on May 15, 1990.
38. Request for Information letter to Charles Myers Jr. dated January 30, 1987 and response dated February 10, 1987.
39. Request for Information letter to Port Authority of Allegheny Company dated June 12, 1990.
40. Request for Information letter to Cleveland Regional Transit Authority dated June 12, 1990.
41. Request for Information letter to Hershey Chocolate USA dated May 21, 1990.
42. Two requests for Information to Ford New Holland dated May 23, 1990 and response dated June 14, 1990.



43. Request for Information letter to New Jersey Transit Authority dated May 23, 1990 and memorandum of telephone call dated June 6, 1990.
44. Request for Information letter to SEPTA dated June 12, 1990.
45. Request for Information letter to Binkley & Ober, Inc. dated May 21, 1990 and response dated May 31, 1990.
46. Request for Information letter to Meadow Brook Travel Trailer Sales dated May 23, 1990 and response dated June 11, 1990.
47. Request for Information letter to Martin Machinery dated May 23, 1990 and response dated June 13, 1990.
48. Request for Information letter to Pottstown Trap-Rock Quarries, Inc. dated May 23, 1990 and response dated June 13, 1990.
49. Request for Information letter to Transcon Express dated May 25, 1990 and response dated June 12, 1990.
50. Request for Information letter to Mrs. Stuart Manix dated June 5, 1990 and memorandum of telephone call dated April 4, 1990.
51. Request for Information letter to Marlin Reedy, Pine Hill Services, Inc. dated May 21, 1990; memorandum of telephone call dated April 17, 1990; letter from Terry Warco, Esq. to Jim Webb (EPA) dated May 30, 1990; and response to request for information letter dated June 5, 1990.
52. Request for Information letter to Ken Hanby dated June 22, 1990.
53. Available Dun & Bradstreet reports on recommended defendants.
54. McKetta & Cunningham, Encyclopedia of Chemical Processing and Design, Batteries, 1977.
55. Kirk-Othmer, Encyclopedia of Chemical Technology, 2nd Ed. Inter-Science Publishers, Secondary Cells, Lead-Acid, 1964, Vol.3.
56. Response to EPA request for information letter from Allegheny County Port Authority dated June 25, 1990.